

OF THE
Law-Terms:
A
DISCOURSE

Written by
The Learned ANTIQUARY.
Sir *HENRY SPELMAN*, Kt.

WHEREIN
The Laws of the *Jews, Grecians,*
Romans, Saxons and Normans, rela-
ting to this Subject, are fully ex-
plained.

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SECT. I.

Of the Terms in general.

AS our Law-books have nothing, to my knowledge, of the *Terms*, so were it much better if our Chronicles had as *little*: For though it be little they have in that kind, yet is that little very untrue, affirming that *William the Conquerour* did first institute them. It is not worth the examining who was *author* of this error; but it seemeth that (a) *Polydore* (a) *Deinde* *Virgil* (an alien in our Common-wealth, and not well endenized in our Antiquities) spread it first in print. I purpose not to take it upon any man's word: but, searching for the fountain, will, if I can, deduce them from thence, beginning with their definition.

(a) *Deinde*
constituit
[Guilielmus
Conquestor]
ut quater
quotan-
nis, &c.
Lib. 9. p. 154.
l. 36. &c.

The Terms are certain portions of the Definition, *year in which onely the King's Justices hold plea, in the high Temporal Courts, of Causes belonging to their Jurisdiction,*

B

in

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in the place thereto assigned, according to the ancient Rites and Customs of the Kingdom.

The definition divides it self, and offers these parts to be consider'd.

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1. The *names* they bear.
2. The *original* they come of.
3. The *time* they continue.
4. The *persons* they are held by.
5. The *causes* they deal with.
6. The *place* they are kept in.
7. The *rites* they are performed with.

These parts minister matter for a Book at *large*, but my purpose upon the occasion imposed being to deal only with the *institution* of the Terms; I will travel no farther than the *three* first stages of my division, (that is) touching their *Name*, their *Original*, and their *Time* of continuance.

SECT II.

Of the Names of the Terms.

THE word *Terminus* is of the Greek *τέρας*, which signifieth the *Bound, End, or Limit* of a thing, here particularly of the *time* for Law-matters. In the Civil-Law it also signifieth a day set to the Defendant, and in that sense doth *Bracton* and others sometimes use it. *Mat. Paris* calleth the Sheriff's *Turn, Terminum Vicecomitis*, and in the addition to the M: SS: Laws of King *Inas*, *Terminus* is applied to the Hundred-Court; as also in a Charter of *Hen. 1.* prescribing the time of holding the Court. And we ordinarily use it for any set portion of time, as of Life, Years, Lease, &c.

The space between the Terms, is named *Vacation, à Vacando*, as being Leasure from Law-business, by Latins *Iustitium à jure stando*, because the Law is now at a *stop* or *stand*.

The Civilians and Canonists call Term-time *Dies Juridicos*; Vacation, *Dies Feriales*, Days of leasure, or intermission, Festival-days, as being indeed sequester'd from troublesome affairs of humane business, and devoted properly to the service of God, and his Church. According to this our Saxon and Norman Ancestours divided the year also between God and the King, calling those days and parts that were assigned to God, *Dies pacis Ecclesie*, the residue allotted to the King, *Dies*, or *tempus Pacis Regis*.

Divisum Imperium cum Jove Caesar habet.

Other names I find none anciently among us, nor the word *Terminus* to be frequent, till the time of *Hen. 2.* wherein *Gervascius Tilburiensis*, and *Ranulphus de Glanvilla* (if those books be theirs) do continually use it for *Dies pacis Regis*.

The ancient *Romans*, in like manner, divided their Year between their Gods, and their *Commonwealth*, naming their Law-days, or Term-time, *Fastos*, because their *Prætor* or Judge might then *Fari*, that is speak freely; their Vacation, or days of Intermission (as appointed to the service of their Gods) they

they called *Nefastos*, for that the *Prator* might *ne fari*, not speak in them judicially. *Ovid Fastorum lib. 1.*

*Ille Nefastus erat, per quem tria verba
silentur,*

Fastus erat per quem lege licebat agi.

When that the three Judicial words

The Pretor might not use,

It was Nefastus: Fastus then,

When each man freely sues.

The three Judicial words were *Do*, *Dico*, *Abdico*; by the first he gave licence *Citare partem ream*, to Cite the Defendant; by the 2d. he pronounced sentence; and by the 3d. he granted execution. This obiter.

The word *Term* hath also other considerations, sometimes it is used for the whole space, from the first Return to the end of the Term, including the day of (a) Return *Essoine*, *Exception*, *Retorn. Brev.* Sometimes and most commonly excluding these from the first sitting of the Judges in full Court (which is the first day for appearance) and this is called *full-Term* by the Statute of 32. of Hen. 8. Cap. 21. as though the part precedent were but *Semi-Term*, *Puisne-Term*, or *Introitus*

(a) See Sect.
5. Cap. 6.

Termini : The words of the Stat. are these, *That Trinity-Term shall begin the Munday next after Trinity-Sunday, for keeping the Essoines, Returns, Prof-fers and other ceremonies heretofore used, &c. And that the full term of the said Trinity-Term shall yearly for ever begin the Fryday next after Corpus Christi-Day.* Here the particulars I speak of, are apparently set forth, and the Term declared to begin at the *first* Return. By which reason it falleth out that the eight days wherein the Court of the Exchequer sits, at the beginning of Michaelmas-Term, Hilary-Term and Easter, are to be accounted as *parts* of the Terms, for that they fall within the *first* Return: the Exchequer having *one* Return in every of them, more than the Courts of Common-Law have, viz. *Craftino Sancti Michaelis, Octabis Hilarii, and Octabis or Clausum Pasche*: And it seemeth that Trinity-Term had *Craftino Trinitatis* in the self-same manner, before this Statute alter'd it.

SECT. III.

Of the Original of Terms or Law-days.

LA W-days or *Dies Juridici*, which we call *Terms*, are upon the matter as ancient as *offences* and *controversies*: God himself held a kind of Term in *Paradise*, when judicially he tryed and condemned *Adam*, *Eve*, and the *Serpent*. In all Nations, as soon as Government was settled, some time was appointed for punishing offences, redressing of wrongs, and determining of controversies; and this time to every of those Nations was their *Term*. The *Original* therefore of the Terms or Law-days, and the time appointed to them, are like the Signs of Oblique Ascention in Astronomy, that rise together. I shall not need to speak any more particularly of this point, but shew it, as it farther offereth it self in our passage, when we treat of the time appointed to Term or Law-days, which is the next and longest part of this our Discourse.

SECT. IV.

Of the Times assigned to Law-matters, called the Terms.

WE are now come to the great Arm of our Division, which spreads it self into many branches, in handling whereof we shall fall, either *necessarily* or *accidentally*, upon these points, *viz.*

1. Of Law-days among the *Antients, Jews and Greeks.*
2. Of those among the *Romans* using *choice* days.
3. Of those among the *Primitive Christians* using *all* alike.
4. How *Sunday* came to be exempted.
5. How other *Festivals*, and other *Vacation* days.
6. That our *Terms* took their *original* from the *Canon-Law.*
7. The *Constitutions* of our *Saxon Kings*; *Edward the Elder*, *Guthburn the Dane*, and the *Synod of Eanham* under *Ethelred*, touching this matter.

8. The Constitutions of *Cannut* more particular.

9. The Constitutions of *Edward* the *Confessour* more material.

10. The Constitution of *William* the *Conquerour*. And of Law-days in *Normandy*.

11. What done by *William Rufus*, *Stephen* and *Henry* the 2d.

12. Of *Hilary-Term* according to those ancient Laws.

13. Of *Easter-Term* in like manner.

14. Of *Trinity-Term* and the long Vacation following.

15. Of *Michaelmas-Term*.

16. Of the later Constitutions of the Terms by the Statutes of the 51. of *Hen.* 3. and 36. of *Edw.* 3.

17. How *Trinity-Term* was alter'd by the 32. of *Hen.* 8.

18. And how *Michaelmas-Term* was abbreviated by Act of Parliament.
16. *Carol.* 1.

C H A P. I.

Of Law-days among the Ancients.

THE time allotted to Law-businesse seemeth to have been that from the beginning amongst all, or most Nations, which was not particularly dedicated (as we said before) to the service of *God*, or some rites of *Religion*. Therefore whilst *Moses* was yet under the Law of Nature, and before the positive Law was given, he sacrificed and kept the holy Festival with *Jethro* his father-in-law on the one day, but judged not the people till the day after; Some particular instance (I know) may be given to the contrary, as I shall mention, but this seemeth to have been at that time the general use.

Greeks.

The *Greeks*, who (as *Josephus* in his book against *Appion* witnesseth) had much of their ancient Rites from the Hebrews, held two of their † *Prytanean-Days* in every Month for civil matters, and the third onely for their *Sacra*.

† Every month had about 6. more or less of them, so called because on them the Prytanzen Magistrates might hold Courts.

Eschi-

Æschines, in his Oration against *Ctesiphon*, chargeth *Demosthenes* with writing a Decree in the Senate, that the * *Prytanæan Magistrates* might hold an Assembly upon the 8. day of the approaching Month of † *Elaphebolion*, when the holy Rites of *Æsculapius* were to be solemnized.

* So called from the Πρυτανείον, where their business was to sit onely on things inanimate, as

when a peice of stone, timber or iron, &c. fell on a man, if the party that slung it were not known, sentence was past on that thing which slew him; and the Masters of this Court were to see that thing cast out of the Territories of Athens. See the Attick Antiq. l. 3. Chap. 3. Section 4. † The month February, or, as others would have it March, when Sacrifices were most usually offer'd to the Goddess *Diana*, Ελαφεβόλιον, cognomen *Diana*, quod est, jaculis cervos figens.

The Romans likewise (whether by *Romans* instinct of nature or president) medled not with Law Causes during the time appointed to the worship of their Gods, as appeareth by their *Primitive Law* of the 12. Tables, *Feriis jurgia amovendo*, and by the places before cited as also this of the same *Tables*.

Post semel extra Deo data sunt licet omnia fari.

Verbâque honoratus libera Prætor habet.

When Sacrifice and holy Rites were done,
The Reverend Pretor then his Courts begun.

To

To be short, it was so *common* a thing in those days of old, to exempt the times of exercise of *Religion* from all *worldly* business; that the Barbarous Nations, even our *Angli*, whilst they were yet in *Germany*, the *Suevians* themselves, and others of those Northern parts would in no-wise violate or interrupt it.**Tacitus* says of them that, during this time, *Non bellum ineunt non arma sumunt, clausum omne ferrum; pax & quies tunc tantum nota, tunc tantum amata.* Of our *German* Ancestours we shall speak more anon; our *British* are little to the purpose: they judged all Controversies by their Priests the *Druides*, and to that end met but once a year as †*Cæsar* sheweth us by those of the *Gauls*.

I will therefore seek the *Original* of our Terms onely from the *Romans*, as all other Nations that have been subject to their Civil and Ecclesiastical Monarchy do, and must.

* Lib. de
Moribus
Germ. Cap.
40.

† De bello
Gallico lib.
6.

C H A P. II.

Of Law-days amongst the Romans using choice days.

TH E ancient Romans, whilst they were yet *Heathens*, did not as we at this day use certain continued portions of the year, for a legal decision of Controversies, but out of a superstitious conceit that some days were ominous, and more unlucky than others (according to that of the *Egyptians*,) they made one day to be *Fastus*, or Term-day, and another (as an *Egyptian* day) to be *Vacation* or *Nefastus*: Seldom two *Fasti*, or Law-days together, yea they sometimes divided one and the same day in this manner,

Qui modo Fastus erat, manè Nefastus erat,

The afternoon was Term, the morn'g Holy-day.

Nor were all their *Fasti* applied to Judicature, but some of them to other meetings and Consultations of the
Com-

Commonwealth; so that being divided into three sorts, which they called *Fastos proprii*, *Fastos Intercisos*, & *Fastos Comitiales*, they contained together 184. days, yet through all the Months in the year there remained not properly to the Pretor, as *Judicial* or *Trivernal Days* above 28; Whereas, before the abbreviation of Michaelmas Term by the Statute of 16. Car. 1. we had in our Term above 96. Days in Court, and now have 86. besides the Sundays and Exempted Festivals which fall in the Terms; and those are about 28. or there about. † Sir Thomas Smith counts it strange, that three Tribunals in one City in less than a third part of the year should satisfy the wrongs of so large and populous a Nation as this of England. But let us return where we left off.

† De Rep.
Angl. lib. 3.

C H A P. III.

Of Law-days amongst the primitive Christians, and how they used all times alike.

TO beat down the Roman superstition touching the *observation* of days, against which St. *Augustine* and others wrote vehemently; the Christians at first used all days alike for hearing of Causes, not sparing (as it seemeth) the *Sunday* it self, thereby falling into another extreme: Yet had they some president for it from *Moses* and the *Jews*. For * *Philo Judæus* * Lib. 3. in the life of *Moses* reporteth, that the cause of him that gather'd sticks on the *Sabbath-day*, was by a solemn Council of the Princes, Priests, and the whole Multitude, examined and consulted of on the *Sabbath-day*. And the *Talmudists*, who were best acquainted with the Jewish Customs, as also *Galatinus* the Hebrew, do report that their Judges in the Council called *Sanhedrim* sate on the week-day from morning to night, in the *Gates* of the City;

City ; and on the Sabbath, and on Festivals upon the Walls. So the whole year then seemed a *continual* Term, no day exempted. How this stood with the Levitical Law, or rather the Moral, I leave to others.

C H A P. IV.

How Sunday came to be exempted.

BUT, for the reformation of the abuse among Christians, in perverting the Lord's day to the hearing of clamorous Litigants, it was ordained in the year of our Redemption 517. by the Fathers assembled in *Concilio Taraconensi* Cap. 4. after that in *Concilio Spalensi* Cap. 2. and by Adrian Bishop of Rome in the *Decretal Caus. 15. quæst. 4.* That, *Nullus Episcopus vel infra positus Die Dominico causas judicare [aut ventilare] pre-sumat*, No Bishop or inferiour person presume to judge or try causes on the Lord's day. For it appeareth by Epiphanius, that in his time (as also many hundred years after) Bishops and Clergy-men did hear and deter-

determine Causes, lest Christians, against the rule of the Apostle, should goe to Law under *Heathens* and *Infidels*.

This *Canon* of the Church for exempting Sunday was by *Theodosius* fortified with an *Imperial* Constitution, whilst we *Britains* were yet under the Roman Government, *Solis die, quem dominicum certe dicere solebant majores, omnium omnino litium & negotiorum quiescat intentio*. Thus was Sunday redeemed from being part of the Term; but all other days by express words of the Canon were left to be *Dies Juridici*, whether they were mean or great Festivals; For it thus followeth in the same place of the (a) *Decretals*; (c) *Caus. 14. quest. 4. C. 1.*
Ceteris vero diebus convenientibus personis illa quae justa sunt habent licentiam judicandi, excepto criminali (or as another Edition reads it) *exceptis criminalibus negotiis*. The whole Canon is verbatim also decreed in the *Capitulars* of the Emperours * *Carolus & Ludovicus*. * *Lib. 6. Cap. 245. à Bénédict. Levis.*

C H A P. V.

How other Festival and Vacation Days were exempted.

LET us now see how other Festivals and parts of the year were taken from the Courts of Justice. The first Canon of note that I meet with to this purpose is that in *Concilio Triburienſi* Ca. 35. in or about the year 895. *Nullus Comes, nulluſque omnino ſecularis Diebus Dominicis uel Sanctorum in Feſtis ſeu Quadrageſſime, aut jejuniorum, placitum habere, ſed nec populum preſumat illo coercere.*

† Bin. Tom.
3. Part. 1.
Sect. 2. Cir-
ca annum
Chriſti 845.

After this manner the Council of *Meldis* Ca. 77. took Eaſter-week, commonly called the *Oſtaves*, from Law-buſineſs; *Pasche hebdomade feriandum, forenſia negotia prohibentur.* By this example came the *Oſtaves* of *Pentecoſt*, *St. Michael*, the *Epiphany*, &c. to be exempted, and principal Feaſts to be honoured with *Oſtaves*.

The next memorable Council to that of *Tribury* was the Council of *Briſford* in Germany in the year 932. which though it were then but *Pro-
vincial*

vincial, yet being afterwards taken by *Gratian* into the Body of the Canon Law, it became *General*, and was imposed upon the whole Church. I will recite it at large, as it stands in * *Binius*, for I take it to be one of the foundation-stones to our Terms. *Placita secularia Dominicis vel aliis Festis diebus, seu etiam in quibus legitima Jejunia celebrantur secundum Canonicam institutionem, minimè fieri volumus. Insuper quoque Gloriosissimus Rex [Francorum Henricus] ad augmentum Christiana Religionis concessit, (or as † Gratian hath it) [Sancta Synodus decrevit] ut nulla judiciaria potestas licentiam habeat Christianos suâ autoritate ad placitum bannire septem diebus ante Natalem Domini, & à * Quinquagesima usque ad Octavas Pasche, & septem diebus ante Natalem Sancti Johannis Baptiste, quatenus adeundi Ecclesiam orationibusque vacandi liberius habeatur facultas.* But the Council of St. Medard extant first in † *Burchard*, and then in *Gratian* enlargeth these vacations in this manner, *Decrevit Sancta Synodus, ut à Quadragesima usque in Octavam Pasche, & ab Adventu Domini usque in Octavam Epiphaniae, necnon & in Jejuniis quatuor temporum,*

* Concil.
Tom 3.
part. 2. pag.
142. In istius
us Concil.
Cap. 2.

† Decret.
Cau. 15.
quæst. 4 C. 2.

* al. Septuagesimâ.

† Cau. 22. q.
5. Ca. 17.

& in Litanis Majoribus, & in diebus Dominicis, & in diebus Rogationum (nisi de concordia & pacificatione) nullus supra sacra Evangelia jurare præsumat.

The word [jurare] here implyeth Law causes, or hold Plea on these days, as by the same phrase in other Laws shall by and by appear, which the Gloss also upon this Canon maketh manifest, saying, in his etiam diebus causa exerceri non debent, citing the other † Canon here next before recited, but adding withall, that the Court and Custome of Rome it self doth not keep Vacation from Septuagesima, nor, as it seemeth, on some other of the days. And this president we follow, when Septuagesima and Sexagesima fall in the compass of Hilary-Term.

† Cau. 15.
q. 4. C. 1.

CHAP. VI.

That our Terms take their Original from the Canon Law.

THUS we leave the *Canon Law*, and come home to our own Country, which out of these, and such other foreign Constitutions (for many more

more there are) has framed our Terms, not by chusing any set portion of the year for them, but by taking up such times for that purpose, as the *Church* and common *Necessity* (for collecting the fruits of the Earth) left undisposed of, as in that which followeth plainly shall appear.

C H A P. VII.

*The Constitutions of our Saxon Kings
in this matter.*

IN *AS* one of our ancient Saxon Kings, made a very *strict* Law against working on Sunday.

Gif þeop mon pȳpce on runnan
ðæg. be his hlaforðes hære. ȳ he
fneo. Legum Cap.
3.

*If a Servant work on Sunday by his
Master's command, let him be made
free, &c.*

And* *Alured* prohibited many Festi-
vals; but the first that prohibited Ju-
ridical proceedings upon such days was
Edward the Elder and *Guthorne* the

* Legum
Alured Cap.
39.

Dane, who in the League between them, made about ten years before the Council of *Ertford*, (that it may appear we took not *all* our light from thence) did thus ordain;

Vide Fœdus
Eadardi &
Guthrumi
Regum Cap.
9.

Ordel 7 aþar rýnbon toceþere.
rpeolr ðagum. 7 piht fæsten ða-
gum;

We forbid that Ordel and Oaths (So they called Law-tryals at that time) be used upon Festival and Lawfull fasting Days, &c.

How far this Law extended appeareth not particularly, no doubt to all Festival and Fasting-days then imposed by the *Roman Church*, and such other *Provincial*, as by our Kings and Clergy here were instituted. Those which by *Alured* were appointed to be Festivals, are now by this Law made also days of Vacation from Judicial Trials, yet seem they, for the most part, to be but *Semi-Festivals*, as appointed onely to *freemen* not to *bondmen*, for so this † Law declareth, viz. The 12. days of *Christmas*, the day wherein *Christ* overcame the Devil, the Anniversary of *St. Gregory*, the 7. days
afore

† See the a-
foresaid 39.
Chapier of
the Laws of
K. Alured.

afore Easter, and the seven days after, the day of St. Peter and St. Paul, and the whole Week before St. Mary in the harvest, and the Feast-day of All-Saints. But the four Wednesdays in the four Ember Weeks are remitted to Bondmen to bestow their work in them as they think good.

To come to that which is more per-

spicuous, I find about (a) Sixty years after, a Canon in our (b) Synod of Eanham, under King Ethelred in these words. First, touching Sunday, (c) *Dominica solennia diei cum summo honore magnopere celebranda sunt, nec*

quicquam in eadem operis agatur servilis.

Negotia quoque secularia questionésque publicæ in eadem deponantur die. Then

commanding the Feast-days of the (c) B. Virgin, and of all the (c) A-

postles, the (d) Fast of the Ember days, (d) Can. 16.

and of the (e) Fryday in every Week (e) Can. 17.

to be duely kept; it proceedeth thus, (f) Can. 18.

(f) *Judicium quippe quod Anglicè Or-*
del dicitur, & juramenta vulgaria, fe-
stivis temporibus & legitimis jejuniis,

The Synod of Eanham.

(a) 'Twas held between the years 1006. and 1013. See the Authour's Conc. Britan. Tom. 1. pag. 510.

(b) The word Synod here signifies more than Council, not as 'tis usually restrained to that of the Clergy only.

(c) } Concil. Eanham.
(c) }
(c) } Can. 15.

sed & ab Adventu Domini usque post Octabas Epiphania, & à Septuagesima usque 15. dies post Pascha minime exerceantur: Sed sit his temporibus summa pax & concordia inter Christianos, sicut fieri oportet. It is like there were some former Constitutions of our Church to this purpose; but either mine eye hath not lighted on them, or my memory hath deceived me of them.

C H A P. VIII.

C*Anutus* succèeding shortly after by his Danish sword in our English Kingdome, not onely *retained* but *revived* this former Constitution, adding, after the *manner* of his zeal, two *new* Festival and Vacation days.

Canuti Leges
cap. 17.

And we forbeosað ordal. 7 að f
fneolj dagum. 7 ymbren dagum. 7
lenden dagum. 7 þiðt fasten da-
gum; 7 fram Adventum domini eþre-
cah toþa dag;

*And we forbid Ordal and Oaths on
Feast-days, and Ember days, and Lent,
and*

and set fasting days, and from the Advent of our Lord till eight days after [the] twelve [days] be past. And from Septuagesima till fifteen nights after Easter. And the Sages have ordained that St. Edward's day shall be Festival over all England on the 15. of the Kalends of April, and St. Dunstan's on the 14. of the Kalends of June, and that all Christians (as right it is) should keep them hallowed and in peace.

Canutus, following the example of the Synod of Eanham, setteth down in the Paragraph next before this recited, which shall be Festival and which Fasting-days, appointing both to be days of Vacation. Among the Fasting days he nameth the *Saints Eves* and the *Frydays*; but excepteth the Frydays when they happen to be Festival days, and those which come between *Easter* and *Pentecost*; as also those between *Midwinter* (so they called the Nativity of our Lord) and *Octabis Epiphania*. So that, at this time, some Frydays were Law-days and some were not. Those in Easter Term, with the Eve of *Philip* and *Jacob*, were, and the rest were not. The reason of this partiality (as I take it) was; they fasted not at

(a) Mat. 9.
15.
Mark. 2. 19.

at Christmas for joy of Christ's *nati-*
vity, nor between Easter and Whit-
fontide, for that Christ *continued* up-
on the Earth, from his Resurrection
till his Ascension ; And (a) the Chil-
dren of the wedding may not fast so long
as the Bridegroom is with them : Nor
at Whitsuntide for joy of the coming
of the Holy Ghost.

C H A P. IX.

The Constitution of Edward the Con-
fessour most material.

(b) Leges
E. 1. Conj. c. 9.

Saint Edward the Confessour drew
this Constitution of *Canutus* nearer
to the course of our time, as a Law in
these words : (b) *Ab Adventu Domi-*
ni usque ad Octabas Epiphania pax Dei
& sanctæ Ecclesiæ per omne Regnum ; si-
militer à Septuagesima usque ad Octabas
Pasche ; item ab Ascensione Domini us-
que ad Octabas Pentecostes ; item omni-
bis diebus quatuor temporum ; item om-
nibus Sabbatis ab hora nona, & totâ die
sequenti, usque ad diem Luna ; item Vi-
giliis Sanctæ Mariæ, Sancti Michaelis,
Sancti Johannis Baptistæ, Apostolorum
omnium

omnium & Sanctorum quorum solennitates a Sacerdotibus Dominicis annunciantur diebus; & omnium Sanctorum in Kalendis Novembris, ab hora nona Vigiliarum, & subsequenti solennitate: Item in Parochiis in quibus dedicationis dies observatur; item Parochiis Ecclesiarum ubi propria festivitas Sancti celebratur, &c. The Rubrick of this Law is, *De temporibus & diebus pacis Regis*, intimating Term-time, and here in the Text the Vacations are called *Dies pacis Dei & sanctæ Ecclesie*, as I * said in the beginning. * *scilicet. 2.* But *pax Dei, pax Ecclesie, & pax Regis* in other Laws of Edward the Confessor, and elsewhere, have other significations also more particular. *Hora nona* is here (as in all Authours of that time) intended for three of the Clock in the after-noon, being the ninth hour of the artificial day, wherein the Saxons, as other Nations of Europe, and our ancestours of much later time, followed the Judaical computation: perhaps till the invention and use of Clocks gave a just occasion to alter it, for that they could not dayly tarry for the unequal hours.

C H A P. X.

The Constitution of William the Conquerour.

(a) In Hen.
2. pag. 6co.

(b) Legum
Anglo—
Saxon.
pag. 137.

THIS Constitution of *Edward the Confessour* was amongst his other Laws confirm'd by *William the Conquerour*; as not onely (a) *Hoveden*, and those ancient Authours testify, but by the *Decree* of the *Conquerour* himself, in these words; (b) *Hoc quoque precipio ut omnes habeant & teneant Leges Edwardi in omnibus rebus, adauctis his que constituimus ad utilitatem Anglorum.* And in those *Auctions* nothing is added, alter'd, or spoken, concerning any part of that Constitution. Neither is it likely that the *Conquerour* did much innovate the course of our Terms or Law-days, seeing he held them in his own Dutchy of *Normandy*, not far differing from the same manner, having received the Customs of that his Country from this of ours, by the hand of *Edward the Confessour*, as in the beginning of their old *Customary* themselves do acknowledge.

ledge. The words touching their Law-days or *Trials* are these, under the Title, *De Temporibus quibus leges non debent fieri* : (c) *Notandum autem est quod quaedam sunt tempora in quibus leges non debent fieri, nec simplices, nec aperte, viz. omnia tempora in quibus matrimonia non possunt celebrari. Ecclesia autem legibus apparentibus omnes dies Festivus perhibet, & defendit, viz. ab hora nona die Jovis, usque ad ortum Solis die Lune sequenti, & omnes dies solennes novem lectionum & solennium jejuniorum, & dedicationis Ecclesie in qua duellum est deducendum.* This Law doth generally inhibit all Judicial proceedings, during the time wherein *Marriage* is forbidden, and particularly all trials by *Battail*, (which the French and our (d) *Glanvill* call *Leges apparentes, alias Apparibiles, vulgarly Loix Apparifans*) during the other times therein mention'd. And it is to be noted, that the Emperour *Frederick the Second* in his (e) *Neapolitan Constitutions* includeth the Trials by *Ordeal* under *Leges paribiles*. But touching the times wherein *Marriage* was forbidden, it agreed for the most part with the Vacations prescribed by *Edward the Confessor*, especially touching the beginning of them.

(c) Custom :
Cap. 80.

(d) Lib. 4.
C. 1.
Lib. 14. c.
1. 2.

(e) Lib. 2.
Art. 32.

them. Of *Dies novem lectionum*, we shall find occasion to speak hereafter.

C H A P. XI.

*What done by William Rufus. Hen. 1.
K. Stephen, and Hen. 2.*

AS for *William Rufus*, we reade that he pulled many *lands* from the Church, but not that he abridged the *Vacation* Times assigned to it.

Henry the 1. upon view of former Constitutions, composed this Law under the Title, *De observatione Legis faciendi*, viz, *Ab adventu Domini usque ad Octabas Epiphaniae, & à Septuagesima usque ad 15 dies post Pascham, & Festis diebus, & quatuor Temporum, & diebus Quadragesimabibus, & aliis legitimis Jejuniis, in diebus Veneris, & vigiliis* (a) *Sanctorum Apostolorum non est tempus leges faciendi, vel iurandum* (b) *nisi primo fidelitate domini vel concordia*) *vel bellum, vel ferri, vel aque, vel leges* (c) *exactiones tractari, sed sit in omnibus vera pax, beata charitas, ad honorem omnipotentis Dei, &c.* The
Copy

(a) Alii legunt. Singulorum.

(b) nisi primo] al. pro. (c) al. exactionis.

Copy of these Laws is much corrupted, * Anno
and it appeareth by *Florence Wigorn's* Dom. 1742.
Continuer, that the * *Londoners* refused
them, and put *Maud* the Empress to
an ignominious flight when she pressed
the *observation* of them. But in *this*
particular branch there is nothing not
agreeable to some former Constitution.
The word *Bellum* here signifieth
Combats, which among our *Saxons*
are not spoken of, and by those of
Ferri vel Aquæ, are meant *Ordal*.

King *Stephen* by his Charter recited
at *Malmesbury*, confirmed and
established by a Generality † *bonas leges* † Hist. Nov.
& *antiquas*, & *justas consuetudines*. lib. 1. pag. 179.

Henry the 2d. expressly ratified the
Laws of *Edward the Confessor*, and
William the Conquerour, as (c) *Hoveden* (c) In Hen.
telleth us, saying, that he did it by the 2. pag. 600.
advice of *Ranulph Glanvill* then newly
made *Chief Justice of England*; which
seemeth to be true, for that * *Glanvill* . Lib. 2.
doth accordingly make some of his Cap. 12.
Writs returnable in *Ostavi*, or *Clauso*
Pasche where the Laws of *Edward the*
Confessor appoint the end of *Lent*
Vacation: And (e) *Gervaseus Tilburi-* (e) Dial. de
ensis also mentioneth the same return. Scacc.

C H A P. XII.

The Terms laid out according to these ancient Laws.

TO lay out now the bounds of the Terms according to these Canons and Constitutions, especially that ancient Law of Edward the Confessor; it thus appeareth, viz.

Hilary-Term.

Hilary Term began then certainly at *Octabis Epiphaniae*, that is the thirteenth day of January, seven days before the first Return is now, and nine days before our Term beginneth, and ended at the Saturday next before *Septuagesima*, which being movable made this Term longer some years than in others. *Florentinus Wigorniensis*, and *Walsingham* in his (a) *Hypodigma Neustrie* saith, — *Anno 1096. in Octabis Epiphaniae apud Sarisburiam Rex Gulielmus Rufus tenuit Consilium in quo iussit Gulielmo de Anco in duello victi oculos eruere, & testiculos abscindere, & Dapiferum illius Gulielmum de Alderi, filium Amite illius suspendi, &c. proceeding also judicially against others.*

(4) *Pag. 441.*
lin. 18.

others. Though *Walsingham* calleth this Assembly *Consilium* with an *s*, and *Wigorniensis Concilium* with a *c*, (the word *Term* perhaps not being in use in the days of *William Rufus*) yet it may seem to be no other, than an Assembly of the *Barons*, in the King's Court of State, (which was then the place of Justice) to proceed judicially against these offenders. For the *Barons* of the Land were at that time the Judges of all Causes, which we call *Pleas of the Crown*, and of all other belonging to the Court of the King: So that the proceedings being *Legal* and not *Parliamentary*, it appeareth that it was then *no Vacation*, and that the Term was begun at *Ostabis Epiphania*; whereby it is the likelier also that it ended at *Septuagesima*, lest beginning it, as we now do, some years might happen to have no *Hilary-Term* at all, as shall anon appear. And this our ancient use of ending the Term at *Septuagesima* is some inducement to think, the Council of *Ertford* to be depraved, and that the word there *Quinquagesima* should be *Septuagesima*, as the gloss there reporteth it to be in some other place: And as well *Gratian* mistakes this, as he hath

done the Council it *self*, attributing it to *Ephesus*, a City of *Ionia*, instead of *Ertford* a town in *Germany*; where *Burchard* before him, and *Binius* since, hath placed it.

It comes here to my mind, what I have heard an old *Chequerman* many years agoe report, that *this* Term and *Trinity-Term* were in ancient time either *no* Terms at all, or but as *reliques* of *Michaelmas* and *Easter-Terms*, rather than *just* Terms of themselves: Some courses of the *Chequer* yet incline to it. And we were both of the mind, that want of business (which no doubt in those days was *very* little) by reason Suits were then for the most part determined in inferiour Courts, was the cause of it. But I since observe another cause, *viz.* That *Septuagesima* or Church-time one while trode so near upon the heels of *Octabis Epiphania* (I mean came so soon after it,) that it left not a whole week for *Hilary-Term*; and again, another while, *Trinity-Sunday* fell out so late in the year, that the common necessity of Hay-seed and Harveſt, made that time *very* little, and *unfrequented*.

For inasmuch as *Easter-Term* (which is the *Clavis*, as well to shut up

up *Hilary-Term*, as to open *Trinity-Term*,) may according to the General Council of *Nice*, holden in the year 922. fall upon *any* day between the 22. of October exclusively, which then was the *Æquinoctium*, and the 25 of April inclusively (as the *farthest* day that the Sunday following the Vernal Full-Moon can happen upon;) *Septuagesima* may *sometimes* be upon the 18. of January, and then they could not in ancient time have above 4. days Term, and we at this day *no* Term at all, because we begin it not till the 23. of January, which may be *six* days after *Septuagesima*, and *within* the time of Church-Vacation. But what *Hilary-Term* hath now lost from the *beginning* of it, it hath gained at the latter *end* of *Trinity-Term*. And I shall speak more of this by and by.

CHAP. XIII.

Easter-Term.

E *Aster-Term*, which now beginneth two days after *Quindena Pascha*, began then as the Law of *Edward* the

Confessor appointed it, at *Oftab.* This is verified by *Glarvill*, who maketh one of his *Writs* returnable thus; —
Summoneo per bonos summonitores quatuor legales milites de vicineto de Stock, quod sint ad Clausum Pascha coram me vel Justiciariis meis apud Westmonasterium ad eligendum supra sacramentum suum duodecim legales milites. But, as it began then nine days sooner than it now doth, so it ended *six* or *seven* days sooner, (*viz.*) before the *Vigil* of *Ascension*, which I take to be the meaning of the Law of *Edward* the *Confessor*, appointing the time from the *Ascension* (*inclusive*) to the *Oftaves* of *Pentecost* with *Ascension-Eve* to be *dies pacis Ecclesia*, and *Vacation*.

C H A P. XIV.

Trinity-Term.

T*Trinity-Term* therefore in those days began as it now doth (in respect of the return) at *Oftab. Pentecostes*, which being always the day after *Trinity-sunday* is now by the *Stat. of 32 of Hen. 8.* appointed to be called

called *Crastino Trinitatis*. But it seemeth that the Stat. 51. of Hen. 3. changed the beginning of this Term from *Crastino Trinitatis* to *Octab. Trinitatis*, and that therefore the Stat. of Hen. 8. did no more in this point than reduce it to the former original. Astouching the end of this Term, it seemeth also that the said Stat. of 51. Hen. 3. assigned the same to be within two or three days after *Quindena Sancti Johannis* (which is about the twelvth of July) for that Statute nameth no return after.

Bnt, for ought that hindreth by the Canons, it is *tanquam Terminus sine termino*; for, there was no set Canon or Ecclesiastical Law (that I can find) to abridge the continuance thereof till *Michaelmas*-Term, unless the 7. days next before St. John Baptist, were (according to the Canon of *Ertford*) used as days of intermission, when they fell after the *Octaves* of Pentecost as commonly they do, though in the year 1614. four of them fell within them. And except the Ember-days next after *Holy Rood*; for *Jejunia quatuor Temporum*, as well by the Laws of *Canutus*, and *Edward the Confessor*, as by all other almost

before recited, are either expressly or implicitly exempted from the days of Law. But when *Trinity-Sunday* fell near the Feast of *St. John Baptist*, then was the first part of this Term so thrust up between those days of the Church, that it was very short; and the latter part being always very late did so hinder Hay-seed and Harvest following, that either the course of it must be shortned, or it must still usurp upon the time, allotted by nature to collect the *fruits* of the earth.

For as *Religion* closed the Courts of Law in other parts of the year, so now doth publick necessity stop the progress of them; following the Constitution of (a) *Theodosius*, thus decreeing;—*Omnes dies jubemus esse juridicos. Illos tantum manere feriarum dies fas erit, quos geminis mensibus ad requiem laboris indulgentior annus excepit: aestivos fervoribus mitigandis, & autumnos fructibus discerpendis.* This

(a) Cod. lib.
3. Tit. 12.
De Feriis.
Cap. 7.

(b) Tit. De
Feriis. Ca. 5.

(c) Cau. 15.
quæst. 4.

(d) Silvanum lib. 4.

Carm. 4.
quod inscri-

bitur. Ad
Victorium

Marcellum.

is also confirmed in the (b) C. — and in (c) *Gratian* with the *Glosses* upon them to which I leave you, but is of old thus expressed by (d) *Statius*, as if it were *ex jure Gentium*:

Certe

*Certè jam Latia non miscent iurgia Le-
ges,
Et pacem piger Annus haber, messésque
reversa
Dimisere Forum: nec jam tibi turba re-
orum
Vestibulo, querulique rogant exire Cli-
entes.*

*The Latian Laws do no man now molest,
But grant this weary Season peace and
rest;
The Courts are stopt when harvest comes
about,
The Plaintiff or Defendant stirs not out.*

So the *Longobards* (our brethren as touching Saxon original) appointed for their Vintage a particular Vacation of 30 days, which *Paulus Diaconus* doth thus mention: *Proficiscentes autem eo ad villam, ut juxta ritum imperialem triginta*: Whereby it appeareth that this time was not onely a time of Vacation, in those ancient days, but also of feasting and merriment, for receiving the fruits of the earth; as at *Nabal's* and *Abshalom's* 1 Sam. 25. 4. sheep-shearing, and in divers parts of 2 Sam. 13. 23. England at this day. So the *Normans*,

whose Terms were *once* not so much differing from ours, might not hold their *Affizes* or times of law, but after *Easter* and *Harvest*; that is after the times of holy Church and publick necessity) as appeareth by their *Customary*. And forasmuch

* Swainmote or Swanimote,
(from the Saxon *ƿrang* i. e. a
Country Clown or free holder, and
mot or *ƿemot* Conventus)
is a Court of free holders within
the Forest. See 3 Hen. 8. c. 18.

as the * *Swainmote-Courts* are by the ancient Forest-Laws appointed to be kept fifteen days before *Michaelmas*; it seemeth

to be intended that *Harvest* was *then* done, or that in Forests little or no corn was used to be sown.

But is to be remembred, that this Vacation by reason of *Harvest*, *Hay-feed*, *Vintage*, &c. was not of so much solemnity as those in the other parts of the year, and therefore called of the Civilians, *Dies feriati minus solennes*; because they were not dedicated *divino cultui*, but *humane necessitati*. Therefore though Law-business was prohibited on these days to give ease and freedom unto *Suitors* whilst they attended on the Store-house of the Commonwealth; yet was it not otherwise than that by *consent* of parties they might proceed in this Vacation,

cation, whereof see the (b) *Decreta* (b) Lib. 2.
Gregorii. cap. 21.

C H A P. XV.

*Of Michaelmas-Term according to the
 ancient Constitutions.*

Michaelmas-Term (as the Canons and Laws aforesaid leave it) was more uncertain for the *beginning* than for the *end*. It appeareth by a *Fine* taken at *Norwich*, 18 *Hen. 3.* that the Term was *then* holden there, and began within the *Octaves* of Saint *Michael*; for the note of it is; *Hæc est finalis concordia facta in Curia Domini Regis apud Norwicum, die Martis proximo post festum Sancti Michaelis, anno regni Regis Henrici filii Regis Johannis 18. coram Tho. de Mulet, Rob. de Lexint, Olivero, &c.* I observe that the Tuesday next after St. *Michael* can (at the farthest) be but the *seventh* day after it, and yet it *must* be a day within the *Octaves*; whereas the Term * *now* is not till the third day after the *Octaves*. But (a) *Gervasius Tilburiensis*, who lived in the days of *Hen. 2.* hath

* Before the
 abbreviation
 by 16. Car. 1.
 cap. 6.
 (a) Dial. lib.
 2. cap. 3.

hath a Writ in these words : — N. Rex Anglorum, [illi vel illi] Vicecomiti salutem. Vide, sicut teipsum & omnia tua diligis, ut sis ad Scaccarium. [ibi vel ibi in Crastino Sancti Michaelis, vel in Crastino Clausi Pasche] & habeas tecum quicquid debes de veteri firma & nova, & nominatim hec debita subscript. viz. &c. By which it appeareth that the Tērm in the Exchequer, as touching Sheriffs and Accomptants, and consequently in the other parts, began then as now it doth, saving that the Statute *De Scaccario*, 51 Hen. 3. hath since appointed, that Sheriffs and Accomptants shall come to the Exchequer the Monday after the feast of St. Michael, and the Monday after the * *Utas* of Easter. So that this time being neither ferial nor belonging to the Church, may justly be allotted to Term affairs, if the *Octaves* of Saint Michael have no privilege : More of which hereafter.

* *Utas*] i. e. Octava, the eighth day after any Term or Feast.

The end is certainly prefixed by the Canons and Laws aforesaid, that it may not extend into Advent. And it holdeth still at that mark; saving that because Advent Sunday is moveable, according to the Dominical-Letter, and may fall upon any day between the

26th of *November* and the 4th of *December*, therefore the 28th of *November* (as a *middle* period by reason of the Feast and Eve of *St. Andrew*) hath been appointed to it. Howbeit when Advent-Sunday falleth on the 27th of *November*, as *sometimes* it doth, then is the *last* day of the Term (contrary to the Canons and former Constitutions) held in Advent, as it after shall more largely appear.

C H A P. XVI.

The latter Constitutions of the Terms.

TO leave obscurity and come nearer the light, it seemeth by the Statutes of 51 *Hen. 3.* called *Dies communes in Banco*, that the Terms did then either begin and end as they do now, or that those Statutes did lay them out, and that the *Statute* of 36 *Ed. 3. cap. 12.* confirmed that use: For the Returns there mentioned are neither *more* nor *fewer* than * at this day.

Anno 1614.
in which year
this Treatise was
written.

C H A P. XVII.

How Trinity-Term was altered and shortened.

T *Trinity-Term* was altered and shortened by the *Statute of 32 Hen. 8. chap. 21.* which hath ordained it *quoad sessionem*, to begin for ever the *Fryday* after *Corpus-Christi-day*, and to continue 19 days; whereas in *elder times* it began two or three days *sooner*. So that *Corpus-Christi-day* being a *moveable Feast*, this Term cannot hold any *certain station* in the year, and therefore in the year 1614, it began on *St. John Baptist's day*, and the year before it ended on his *Eve*. Hereupon, though by all the *Canons of the Church* and former *Laws*, the *Feast of St. John Baptist* was a *solemn day*, and *exempt* from legal proceedings in *Courts of Justice*; yet it is *no vacation day*, when *Corpus-Christi* falleth (as it did that year) the very day before it: Because the *Statute* hath appointed the Term to begin the *Fryday* next after *Corpus-Christi-day*, which
in

in the said year 1614. was the day *next* before St. John Baptist, and so the Term did of necessity begin on Saint John Baptist's day. This deceived all the Prognosticators, who counting St. John Baptist, for a *grand* day, and no day in Court, appointed the Term in their Almanacks to begin the day *after*, and consequently to hold a day longer; so deceiving many by that their error.

But, the aforesaid Statute of 32 H. 8. changed the whole frame of this Term: For it made it begin sooner by a Return, *viz.* *Crastino Sanctæ Trinitatis*, and thereby brought *Octabis Trinitatis* which before was the *first* Return, to be the *second*, and *Quindena Trinitatis* which before was the *second*, now to be the *third*; and instead of the three *other* Returns of *Crastino Octabis*, and *Quindena Sancti Johannis*, it appointed that which before was *no* Return, but now the *fourth* and *last*, called *Tres Trinitatis*.

The *altering* and *abbreviation* of this Term is declared by the Preamble of the Statute, to have risen out of *two* causes, one for *health*, in dismissing the Concourse of people, the other for *wealth* that the Subject might at-
tend

tend his *Harvest*, and the gathering in the *fruits* of the *earth*. But there seemeth to be a *third* also not mention'd in the Statute, and that is, the uncertain *station*, *length* and *Returns* of the first part of this Term, which, like an *Excentrick*, was one year *near* to *St. John Baptist*, another year far *removed* from it; thereby making the Term not onely *various*, but one year *longer*, and another *shorter*, according as *Trinity-Sunday* (being the *Clavis* to it) fell nearer or farther off from *St. John Baptist*. For if it fell *betimes* in the year, then was this Term very long, and the two *first Returns* of *Octabis* and *Quindena Trinitatis* might be past and gone a fortnight and more, before *Craftino Sancti Johannis* could come in: And if it fell late, (as some years it did) then would *Craftino Sancti Johannis* be come and past, before *Octabis Trinitatis* were gone out. So that many times one or two of the first *Returns* of this Term (for ought that I can see) must in those days *needs* be lost.

C H A P. XVIII.

How Michaelmas-Term was abbreviated by Act of Parliament 16. Car. 1. Cap. 6.

THE last place our Statute-Book affords upon this Subject of the limits and extent of the Terms is the Stat. 16. Car. 1. Chap. 6. intituled, *An Act concerning the limitation and abbreviation of Michaelmas-Term*. For, whereas by former Statutes it doth appear, that Michaelmas-Term did begin in *Octabis Sanctæ Michaelis*, that Statute appoints, that the first Return in this Term shall ever hereafter be *à die Sancti Michaelis in tres septimanas*, so cutting off no less than two Returns from the ancient beginning of this Term, viz. *Octabis Sancti Michaelis*, & *A die Sancti Michaelis in quindecim dies*, and consequently making the beginning of it fall a fortnight later than before. Wherefore the first day in this Term will always be the 23d. day of October, unless it happen to be Sunday, for then it must be defer'd till the day following

following, upon which account we find it accordingly placed on the 24. for the year 1681. This is all the alteration that Statute mentions, and therefore for the end of Michaelmas-Term, I refer the Reader to what our Authour has said already in the 15th. Chapter. It may not be amiss in pursuit of our Authour's method to set down the motives of making this abbreviation as we find them reckon'd up in the Preamble to that Statute. There we find, that the old beginning of Michaelmas-Term, was generally found to be very inconvenient to his Majesty's subjects both Nobles and others.

1. For the keeping of Quarter-Sessions next after the feast of St. Michael the Archangel;
- 2ly. For the keeping their Leets, Law-days and Court-Barons;
- 3ly. For the sowing of land with Winter-Corn, the same being the chief time of all the year for doing it;
- 4ly. For the disposing, and setting in order of all their Winter husbandry and business;
- 5ly. For the receiving and paying of Rents;
- 6ly. Because in many parts of this kingdom, especially the most northern, Harvest is seldom or never Inned till three weeks after the said Feast.

All which affairs they could before by
no

no means attend, in regard of the necessity of their coming to the said Term, so speedily after the Feast of St. Michael the Archangel, to appear upon Juries, and to follow their Causes and Suits in the Law.

SECT. V.

Other Considerations concerning Term-Time.

HAVING thus laid out the frame of the Terms, both according to the *Ancient* and *Modern* Constitutions, it remaineth that we speak something of other points properly incident to this part of our division touching Term-Time, viz.

1. *Why the Courts sit not in the Afternoons.*

2. *Why not upon some whole days, as on Grand-days, double Feasts, and other exempted days, and the reason of them.*

E

3. *Why*

3. *Why some Law-business may be done upon some days exempted.*

4. *Why the end of Michaelmas-Term is sometimes held in Advent, and of Hilary-Term in Septuagesima, Sexagesima, and Quinquagesima.*

5. *Why the Assizes are held in Lent, and at times generally prohibited by the Church.*

6. *Of Returns.*

7. *Of the Quarta dies post.*

8. *Why I have cited so much Canon, Civil, Feodal, and foreign Laws in this Discourse, with an incurfion into the original of our Laws.*

C H A P. I.

Why the high Courts fit not in the Afternoons.

IT is now to be considered why the high Courts of Justice fit not in the *Afternoons*. For it is said in * Scripture, that *Moses* judged the *Israelites* from *Morning* to *Evening*. And the *Romans* used the *Afternoon* as well as the *Forenoon*, yea many times the *Afternoon* and not the *Forenoon*,

* Exod. 18.
14.

as upon the days called *Endotercisi*, or *Intercisi*, whereof the Forenoon was *Nefastus* or Vacation, and the Afternoon *Fastus* or Law-day, as we shewed in the beginning. And the *Civilians* following that Law do so continue them amongst us in their Terms at *this* day. But our Ancestours and other the Northern Nations being more prone to *distemper* and excess of *diet* (as the Canon Law noteth of them) used the Forenoon only, lest *repletion* should bring upon them *drowsiness* and *oppression of spirits*; according to that of St. Jerome, *Pinguis Venter non gignit mentem tenuem*.

To confess the truth, our Saxons (as appeareth by (a) *Huntington*) were unmeasurably given to drunkenness.

(a) Hist.
lib. 6. r.

And it is said in (b) *Ecclesiastes*, *Va*

(b) Cap. 10.
13.

Terra cujus Principes manè comedunt.

Therefore to avoid the inconvenience depending hereon the Council of *Nice* ordained, that *Judices non nisi jejuni judicia decernant*. And in the Council of *Salgunstad* it was afterward decreed, *A. D. 1023, ut lectio Nicani Concilii recitetur*, which being done in the words aforesaid, the same was likewise there confirm'd. According to this in the Laws of *Carolus*

- Magnus* the Emperour it is ordained,
- (a) Tit. (a) *L* ——— *lib. 2. ut Iudices jejuni causas audiant & discernant:* and again
- (b) Lib. Cau. in the (b) *Capitulars Caroli & Lodovici, nē placitum* (c) *Comes habeat nisi jejunus.* Where the word *Comes*, according to the phrase of that time is used for *Judex*, as elsewhere we have it declared to the same effect in the *Capitular ad Legem Salicam*: And
- (c) *Arched. verb. Comes cap. 7. 15.* out of these and such other (d) *Constitutions* ariseth the rule of the Canon Law, that *Que à prandio sunt Constitutiones inter decreta non referuntur.* Yet I find that Causes might be heard and judged in the afternoon; for in *Capitulars lib. 2. --- 33*, and again *lib. 4. Cau. 16.* it is said, *Causa viduarum pupillorum & pauperum audiantur & definiantur ante Meridiem, Regis verò & Potentiorum post Meridiem.* This though it may seem contradictory to the Constitutions aforesaid, yet I conceive them to be thus reconcilable: That the Judges (sitting then but seldom) continued their Courts both Forenoon and Afternoon, from Morning till Evening without dinner or intermission, as at this day they may, and often do, upon great Causes: though being risen and dining, they might
- (d) *Et alia cap. Car. 6. 4.*

might not meet again; yet might they not sit at *night*, or use *candle light*, *Quod de nocte non est honestum judicium exercere*. And from these ancient Rites of the *Church* and *Empire* is our Law derived, which prohibiteth our Jurours, being *Judices de facto*, to have *meat*, *drink*, *fire* or *candle light*, till they be agreed of their verdict,

It may here be demanded how it cometh to pass, that our Judges after *dinner* do take *Affizes* and *Nisi prius* in the Guild-hall of *London*, and in their Circuits? I have yet no *other* answer but that ancient Institutions are discontinued often by some custome grating in upon them, and changed often by some later Constitution, of which kind the instances aforesaid seem to be. For *Affizes* were ordained many ages after by *Henry* the second, as appeareth by the Charter of *Beverly Glanvill* and *Radulphus Niger*, and *Nisi prius* by * *Edward* the first, in the Statutes of *Westminster* 2; though I see not but in taking of them the ancient course might have been continued if haste would suffer it.

* 13 Ed. 1.
cap. 30.

C H A P. II.

Why they sit not at all some days.

(a) An. 5.
& 6. Edw. 6.
cap. 3.

THough there be many days in the Terms, which by ancient Constitutions before recited are *exempted* from Law-busines, as those of the *Apostles, &c.* and that the (a) Statute of *Ed. 6.* appointed many of them to be kept Holy-days, as dedicated, not unto *Saints*, but unto *divine worship*, which we also at this day retain as Holy-days : Yet do not the high Courts forbear sitting in any of them, saving on the Feast of the *Purification*, the *Ascension*, *St. John Baptist*, *All-saints*, and the day after, (though not a Feast) called *All-souls*. When the others lost their privilege and came to be Term-days I cannot find ; it sufficeth that *Custom* hath repealed them by confession of the Canonists. Yet it seemeth to me, there is no provision made for it in the Constitutions of our Church under *Islepp* Archbishop of *Canterbury* in the time of *Edward* the third. For though many ancient Laws
and

and the Decretals of Gregory the 9th had ordained, *judicalem strepitum diebus conquiescere feriat*; yet in a Synod then holden, wherein are all the Holy-days appointed and particularly recited, no restraints of Judicature or *Forensis strepitus* is imposed, but a cessation onely *ab universis servilibus operibus, etiam Reipublica utilibus*. Which though it be in the phrase God himself useth touching many great Feasts, viz.

(a) *Omne servile opus non facietis in iis*, (a) Lev. 23.
yet it is not in that when he instituteth the seventh day to be the Sabbath, 21, 25.

(b) *Non facies omne opus in eo*, without (b) Ex. 35.
servile, Thou shalt doe no manner of 10, 11.
work therein. Now the act of Judicature, and of hearing and determining Controversies is not *opus servile*, L.v. 23. 3.

but *honoratum & plane Regium*, and so not within the prohibition of this our Canon, which being the latter seemeth to qualifie the former. Yea the Canonists and Casuists themselves not onely expound *opus servile* of corporeal and mechanical labour, but admit 26 severall cases where (even in that very kind) dispensation lieth against the Canons, and by much more reason then, with this in question. It may be said that this Canon consequently giveth

liberty to hold plea and Courts, upon their Festivals in the Vacations. I confess that *so* it seemeth; but this Canon hath no power to alter the *bounds* and *course* of the Terms, which *before* were settled by the Statutes of the Land, so that in *that* point it prevailleth not. Why? but there ariseth another question how it comes to pass that the Courts sit in *Easter-Term* upon the *Rogation days*, it being forbidden by the Council of *Medard*, and by the intention of divers *other* Constitutions? It seemeth that it *never* was so used in *England*, or at least not for *many* ages, especially since *Gregory* the ninth; insomuch that among the days wherein he prohibiteth *Forensem strepitum*, clamorous pleading, &c. he nameth them not. And though he *did*, the Glossographers say, that a Nation may by *Custom* erect a Feast that is not commanded by the *Canons* of the Church. * *Et eodem modo posset ex consuetudine introduci, quod aliqua qua sunt de precepto non essent de precepto, sicut de tribus diebus Rogationum, &c.* To be short, I find no such privilege for them in *our* Courts, though we admit them *other* Church *rites* and *ceremonies*.

We

We must now shew (if we can) why the Courts, sitting upon so many Ferial and Holy-days, do forbear to sit upon *some* others, which before I mention'd; the *Purification, Ascension, St. John Baptist, All-Saints, &c.* For, in the Synod under *I sleep* before mention'd, *no* prerogative is given to *them* above the *rest*, that fall in the *Terms*; as namely, *St. Mark* and *St. Philip* and *Jacob*, when they do fall in *Easter Term*, *St. Peter* in *Trinity-Term*, *St. Luke* (before the late abbreviation by 16. Car. 1.) *did* fall, and *St. Simon* and *Jude*, doth *always* fall in *Michaelmas-Term*. It may be said, that, although the Synod did prohibit onely *Opera Servilia* to be done on Festival-days, as the offence most in use at *that* time; yet did it not give licence to doe *any* Act that was *formerly* prohibited by any *Law* or *Laudable Custome*. And therefore if by *colour* thereof, or any former use (which is like enough) the Courts *did* sit on lesser Festivals, yet they *never* did it on the *greater*, among which (*majoris cautela gratiâ*) those *Opera Servilia* are *there* also prohibited to be done on *Easter-day, Pentecost*, and the *Sunday* it self.

Why on some Festivals, and not on others.

Let us then see *which* are the greater Feasts

The differences of Festivals.

Feasts, and by *what* merit they obtain their *privilege*, that the Courts of Justice sit not on them. As for *Sunday*, we shall not need to speak of it, being canonized by *God* himself. As for *Easter* and *Whitsunday*, we shall not need to speak of them neither, because they fall not in the *Terms*: Yet I find a *Parliament* held, at least began on *Whitsunday*. But touching Feasts in general, it is to be understood, that the *Canonists*, and such as write (a) *De Divinis Officiis*, divide them into two sorts, viz. *Festa in totum duplicia*, & *simpliciter duplicia*: And they call them *duplicia*, or double Feasts, for that *all*, or some *parts* of the service, on those days were begun *Voce Duplici*, that is, by two singing-men; whereas on other days all was done by *one*. Our *Cathedral Churches* do yet observe it: And I mean not to stay upon it, for you may see in the (b) *Rationale* which Feasts were of every of these kinds. The *ordinary Apostles* were of the last, and therefore our Courts made bold with them: But the *Purification*, *Ascension*, *St. John Baptist*, with some others that fall not in the *Term*, were of the *first*, and because of *this* and
some

(a) Vide Du-
randi lib. 7.
c. 1. n. 31.

(b) Durand.
lib. 7. Ca. 1.

some other prerogatives were also called, *Festa Majora, Festa Principalia, & Dies novem Lectionum*, ordinarily, double Feasts, and Grand days. Mention is made of them in an (b) Ordinance 8. Ed. 3. That Writs were ordained to the Bishops, to accurse all and every of the perturbors of the Church, &c. every Sunday and Double Feast, &c. But we must needs shew why they were called *Dies novem Lectionum*, for so our old *Rituale de Sarum*, styleth them, and therein lyeth their greatest privilege. After the Arian Heresie against the B. Trinity was by the Fathers of that time most powerfully confuted and suppressed, the Church in memory of that most blessed victory, and the better establishing of the orthodox faith in that point, did ordain, that upon divers Festival-days in the year, a particular Lesson touching the nature of the Trinity, besides the other 8. should be read in their Service, with rejoycing and thanksgiving to God for suppressing that Heresie: And for the greater solemnity, some (c) Bishop, or the chiefest Clergy-man present did perform that duty. Thus came these days to their styles aforesaid, and to be honoured with extra-
or-

(b) Rast Ex-
com. 5.

(c) Beletbm
Explicat.
Cap. 158.

ordinary *Musick, Church-Service, Robes, Apparel, Feasting, &c.* with a particular exemption from Law-Trials amongst the *Normans*, who therefore kept them the more respectfully here in *England*: *Festa enim Trinitatis* (saith *Belethus*) *digniori cultu sunt celebranda.*

Grand days
in France.

In *France* they have two sorts of Grand days, both differing from ours: First, they call them, *Les Grand jours*, wherein an extraordinary Sessions is holden in any Circuit, by virtue of the King's Commission directed to certain Judges of Parliament; Secondly, those in which the *Peers of France* hold once or twice a year their Courts of *Faught Justice*; all other Courts being in the mean time silent. See touching this their *Loyscean De Seigniors.*

Grand days
in England.

To come back to *England*, and our own Grand-days. I see some difference in accounting of them: *Durandus* in his first Chapter, and seventh book reckoneth the *Purification, Ascension* and *St John Baptist*, to be Grand-days, not mentioning *All-Saints*; but both he in his 34th. Chapter, and *Belethus* in his ——— do call it *Festum Maximum & Generale*, being not onely the Feast of *Apostles* and *Martyrs*, but of the *Trinity, Angels* and *Confes-*

fessours, as *Durandus* termeth it. And that honour and duty *Quod in singulis valet, potentiùs valebit in conjunctis*. As for the Feast of *All-Souls*, neither *Durandus*, nor *Belethus*, nor any Ancient of those times (for they lived above 400. years since) do record it for a Festival. But my Country-man *Walsingham* the Monk of *St. Albans* sayth, that *Simon* Archbishop of *Canterbury* in the year 1328. at a Provincial Council holden at *London*, did ordain, (a) *Quòd die Parasceue & in* (a) *The Wal-*
singham,
Hist. Angl.
pag. 129
commemoratione Omnium Animarum
ab omni servili opere cessaretur. Surely he mistook it; for neither is it so mention'd in *Lindewood*, reciting that Canon, nor in the ancient Copy of the Council it self, where the two Feasts canonized by him are the *Parasceue* and the *Conception of the Blessed Virgin*. Yet doubtless, whensoever it was instituted it was a *Great Feast* with us, though no where else. For the old *Primer Eboracensis Ecclesie*, doth not onely set it down in the *Kalendar* for a *double Feast*, but appointeth for it the *whole Service*, with the *nine Lessons*; for it is as a Feast of the *Trinity*. And though neither the *Statute of Edward the 6.* nor our
Church

Church at this day doth receive it; yet being formerly a *Vacation*-day (as it seemeth) our Judges *still* forbear to sit upon it, and have not hitherto made it a day in Court, though deprived of Festival *rites*, and therefore neither graced with *Robes*, nor Feasting.

The Feast of
St. Peter and
St. Paul.

The Feast also of St. *Peter* and *Paul* on the 29th. of *June* was a *Double* Feast, yet it is now become single, and our Judges sit upon it. I confess I have not found the reason, unless that by *Canonizing* St. *Paul* and so leaving St. *Peter* single, we allow him *no* prerogative above the other Apostles, lest it should give colour for his *Primacy*; for to St. *Paul*, as one born out of time, we allow *no* Festival, either in the *Statute* of *Edward* 6. or in the *Almanacks* and *Kalendars* of our *Church*. And why St. *Peter* hath it not is the more observable, for that he not onely is deprived of the ancient dignity of his *Apostleship*, contrary to the *Canons* (as the other are;) but of the privilege given him in that place by Pope *Nicholas* the 2^d. in a *Bull* to *Edward* the *Confessour*, as being *Patron* of the *Paroch* and *Dedication* of *Westminster*, where the *Terms* are kept, and where by right there-

thereof *this* day was also privileged from Court-busines.

Other Festivals I enquire not after, as of *St. Dunstan* and the rest that stand rubricate in *old Kalendar*s; they being abrogated by *old Canons* of our own Church, or the *Statute* of *Edw. 6.* whereof I must note by the way that I find it repealed by *Queen Mary*, but not revived by *Queen Elizabeth*, or *since*. It seemeth that the *Statute* of the *5. and 6. Edw. 6. Cap. 3.* notwithstanding the Repeal of it amongst a multitude of others by *Queen Mary, Anno 1. Sessione 2. Cap. 2.* is revived again, though not by *Queen Elizabeth*, yet by *1 Jacobi Cap. 25.* in these words; *That an Act made in the first year of the Reign of Queen Mary, intituled an Act for the repeal of certain Statutes made in the time of King Edw. the 6. shall stand repealed.*

I am carried from the brevity I intended, yet *all this* lyeth in my way; nor is it out of it to speak a word of *St. George's-day*, which sometimes falleth in *Easter-Term*, and is kept in the *Court Royal* with great solemnity, but not in the *Court Judicial*. Though he stood before in the *Kalendar*, and was the *English Patron* of

St. George's day.

of elder time, yet *H. Chicheley*, Archbishop of *Canterbury* gave him his greatness by canonizing his day to be a *Double Feast* and *Grand day*, as well among the *Clergy* as *Laity*; and that both the *one* and the *other* repairing to their Churches should celebrate it (as *Christmas-day*) free from *Servile-work*, in ardent prayers for safety of the *King* and *Kingdom*. The occasion of this Constitution was, to excite *K. Henry* the 5th. being upon his expedition for *Normandy*; and this, among many Holy-days, was abolished by the *Stat. of 5. and 6. of Edw. 6.* Yet it being the *Festival* of the *Knights* of the *Garter*, it was provided in the * Statute, *That the Knights might celebrate it on the 22. 23. and 24th. of April.* Other Feasts there were of this nature; as that of *St. Winifred* on the 2d. of *November*, which is in effect no day of sitting, but applyed to the pricking of *Sheriffs*.

* parag. 7.

St. Winifred.

These are vanished, and in their room we have one new memorable day of intermitting Court and Law-business for a little in the morning, whilst the Judges in their Robes go solemnly to the great Church at *Westminster* on the 5th. of *November* yearly

The 5th. of
November.

ly, to give God thanks for our *great deliverance from the Powder-Treason*, and hear a *Sermon* touching it, which done they return to their benches. This was instituted by Act of Parliament 3. *Jacobi*, Cap. 1. and it is of the kind of those *Ferial* days, which being ordained by the *Emperours*, not by the *Popes*, are in Canon and Civil Law called *Feriat dies repentini*. I will go no farther among the *tedious* subtilties of distinguishing days; I have not been *matriculated* in the Court of *Rome*: And I confess I neither *do nor can* explain many *objections* and *contrarieties* that may be gathered in these passages. Some *Oedipus* or *Ariadne* must help me out.

C H A P. III.

Why some Law-business may be done on days exempted.

IN the mean time let us see, why *some* Law-business may be done on days *exempted*, and sometimes on Sunday *it self*, notwithstanding any thing above mentioned.

F

For

For as in *Term* time *some* days are exempted from *Term* business, and *some* portion of the day from sitting in Courts; so in the *Vacation* time and days exempted, *some* Law business may be performed by *express* permission of the Canon-Law, according to that of the

(a) *Virgil.*
Georg. lib. 1.
v. 268, & c.

(a) *Poet* in the *Georgicks*,

Quippe etiam Festis quaedam exercere diebus

Fas & jura sinunt —————

The Synod of *Medard* admitteth matters *de pace & concordia*: The Laws of *Hen. 1.* matters of *Concord* and doing *Fealty* to the *Lord*. The Decree of *Gregory* the ninth, in cases of *necessity*, and doing *piety*, according to that of (b) *Prosper*,

(b) *Lib. Ep.*

Non recto servat legalia Sabbata cultu,
Qui pietatis opus credit in his vetitum.

The rule is verified by our *Saviour's* healing on the Sabbath day. Out of *these* and such *other* authorities of the Laws Ecclesiastical and Civil, cited in the *Glosses*, the Canonists have collected *these* Cases, wherein Judges may proceed legally upon the days
prohi-

prohibited, and doe the things here next following.

For matters of *Peace and Concord*, by reason whereof our Judges take the acknowledgment of *Fines, Statutes, Recognizances, &c.* upon any day, even the *Sabbath* it self; (though it were better then to be forborn.)

For suppressing of *Traytors, Thieves*, and notorious *Offenders*, which may otherwise trouble the *peace* of the *Commonwealth*, and *undoe* the *Kingdom*.

For manumission of *Bondmen*: A work of *Piety*.

For saving that which otherwise would *perish*: A work of *Necessity*.

For doing that, which, time over-slipt, cannot be done: As for making *Appeals* within the time limited, &c.

For taking the benefit of a *Wit-ness* that otherwise would be *lost*, as by *Death* or *Departure*.

For making the *Son sui juris*: As if, amongst us, a *Lord* should discharge a *Ward* of *Wardship*. All which are expressed in these Verses;

*Hec faciunt causas Festis tractare diebus,
Pax, Scelus admissum, Manumissio, Res
peritura,*

Terminus expirans, mora Festi abesse volentis,

Cumque potestatis Patrie jus filius exit.

Or thus according to *Panormitanus*; *Ratione Appellationis, Pacis, Necessitatis, Celeritatis, Pietatis, Matrimonii, Latrocinii, & ubicunque in mora promptum est periculum.* So likewise by consent of parties upon *dies Feriati minus solennes, viz. Harvest, Hayseed, &c.* as we have said before. And divers others there are. See the (a) Glosses.

(a) Cau. 15.
q. 4. Tit. de
Feriis c. 5.

C H A P. IV.

Why the end of Michaelmas-Term is sometimes holden in Advent; and the Octaves of Hilary in Septuagesima.

BUT the Terms sometimes extend themselves into the days of the Church which we call *Vacation*; as when Advent Sunday falleth on the 27th of November, then *Michaelmas-Term* borroweth the day after out of Advent; and when *Septuagesima* followeth suddenly upon the *Purification*, *Hilary-Term* not onely *usurpeth* upon it

it and *Sexagesima* (which by the President of the Church of *Rome* here before mention'd it may do) but also upon *Quinquagesima*, *Shrove-Tuesday*, and *Quadragesima* it self; for all which there is matter enough in one place or (a) other already shewn. Yet it is farther countenanced by the Statute of 3 Ed. 1. cap. 51. where it is thus provided; *Forasmuch as it is great charity to doe right to all men at all times (when need shall be;) by assent of all the Prelates it was provided, that Assizes of Novel Disseisin, Mortdauncelter, and Darraign Presentment, should be taken in Advent, Septuagesima and Lent, even as well as inquests may be taken, and that at the special request of the King made unto the Bishops.* Where it is to be noted, that *Inquisitions* might be taken before this Statute within the days prohibited, or Church time, and that this *Licence* extended but to particulars therein mentioned.

(a) As An.
1.27. & 1.26.
Hoveden
p. 663.

CHAP. V.

Why Assizes are holden in Lent.

IT seemeth that by virtue of this Statute, or some other dispensation from the Bishops Assizes began first to be holden in *Lent*, contrary to the Canons. I find in an ancient Manuscript of the Monastery of St. *Albans* a dispensation of this kind thus entitled;

*Licentia concess. Justic. Reg. de Assis.
tenend. sacro tempore non obstante.*

Patent universis per presentes nos Richardum (miseratione divina) Abbatem Monasterii Sancti Albani, licentiam & potestatem auctoritate presentium dedisse dilecto nobis in Christo Domino Johanni Shardlow & sociis ejus Justic. Dom. Regis Assisas apud Barnet (nostre Jurisdictionis exemptae) die Lune proximo ante Festum S. Ambrosii capiendas, juxta formam, vim & effectum Brevis Domini Regis inde iis directi. In cujus, &c. Anno Domini, &c.

Sub magno Sigillo.

Whether

Whether this was *before* or *after* the Statute it appeareth not ; it may seem *before*, or that *otherwise* it had been *needless*. But I find (a) *Shardlow* to be a Justice of Oier in *Pickering Forest*,
 17 Aug. An. 8. Ed. 1. If it were *after*, it seemeth the *Writ* to the Justices extended to somewhat *out* of the Statute, and that this *Licence* was obtained in *majorum cautelam*. But to conclude, although we find not the *reason* of things done in *ancient* ages, yet we may be sure *nothing* was done against the rule of the Church without *special* Licence and dispensation. The Feast of St. *Ambrose* mention'd in the Licence was on the fourth of *April*, which commonly is about a Week or two before *Easter*. And the *Abbas* of St. *Alban*, having exempt jurisdiction within the Province of *Canterbury*, granteth the dispensation to hold *Affizes in tempore sacro*, as the Rubrick explaineth it, lest the words [*nostra jurisdictionis exempta*] might be applied to some *layick* Franchise: I assure my self there are *many* of this kind, if they might come to light.

(a) In com.
ejus.

C H A P. VI.

Of the Returns.

OF the *Returns* I will not venture to speak *much*, but *nothing* at all of *Essoins* and *Exception-days*, for that draweth nearer to the faculty of Lawyers, wherein I mean not to be too busie. The *Returns* are set days in every Term appointed to the Sheriffs, for certifying the Courts what they have done, in execution of the *Writs* they received from them. And I take it, that in old time they were the *ordinary* days set to the Defendants for appearance, every one of them being a se'night after another, to the end that the Defendant according to his *distance* from the place where he was to appear, might have one, two, three or more of these *Returns*, that is, so many *weeks* for his appearance, as he was *Counties* in distance from the Court where he was to appear. This is verified by the Law of * *Ethelred* the *Saxon* King in case of vouching upon *Trover*.

Gif

Gif he cenre oþer an ȝcipa. hæbbe
 an pucena fýpȝt; gif he cenne oþer
 twa ȝcipa hæbbe twa pucena fýpȝt;
 gif he cenne oþer iii. ȝcipa. hæbbe
 iii. pucena fýpȝt; Oþer eallȝa þe
 ȝcipa. ȝpa he cenne. hæbbe ȝpa þeala
 pucena fýpȝt;

*If the Vouchee dwell one Shire off,
 let him at first have one week; if he
 dwell two Shires off, let him have two
 week; if he dwell three Shires off, let
 him have three weeks; and for so many
 Shires as he dwelleth off, let him have so
 many weeks.*

The Law of (a) Henry the First is somewhat more particular; *Qui* <sup>(a) Legum
Hen. 1. Cap.
42.</sup>
*residens est ad domum suam summoneri
 debet de placito quolibet cum testibus. Et
 si domi non est idem dicatur vel capi-
 fero, vel denique familia sue liberè do-
 nunciatur; si in eodem Comitatu sit,
 inde ad septem dies terminum habeat;
 si in alia sit 15. dierum terminum ha-
 beat; & si in tertio Comitatu sit, 3.
 Hebdomade; si in quarto, quarta
 Hebdomade, & ultra non procedit
 ubicunque fuerit in Anglia, nisi compo-
 tens eum detineat * soinius; si ultra ma-*

* Sonius M.
SS. Seld.

(b) M: SS.
Cod. l. in-
tempestas.

re est 6. Hebdomadas habeat & unum
diem ad accessum & recessum maris,
nisi vel occupatio servitii Regis, vel
ipsum aegritudo, vel (b) tempestas, vel
competers aliquod amplius respectet.

† This Statute was published
Anno. 32. Hen. 3. Anno. Salut.
1267.

(a) The same with Marleborough
in Wilts, famous for nothing more
than that this Parliament was
holden there. So Coke Institui.
part 2. fol. 123.

(b) Coke ut supra fol. 149.
bath it thus, Sed si warrantus
ille fuerit infra Comitatum,
tunc, &c.

The † Statute of
(a) Marlebridge Cap.
12. soundeth to this
purpose; In (b) Assis
autem ultima presenta-
tionis & in placito Qua-
re impedit de Ecclesiis
vacantibus dantur dies
de Quindena in Quin-

denam, vel de tribus septimanis in tres
septimanas, prout locus fuerit propinquus
vel remotus. And again, Cap. 27. Sed
si vocatus, &c. (ad warrantum coram
Justiciis itinerantibus) fuerit infra
Comitatum, tunc injungatur Vicecomiti,
quod ipsum infra certum diem vel quartum
(secundum locorum distantiam) faciat
venire sicut in itinere Justiciar.
fari consuevit. Et si extra Comitatum
moneat, tunc rationabilem habeat Sum-
monitionem 15. dierum ad minus
secundum discretionem Justiciar. &
Legem Communem.

There was also another use of Re-
turns, as appeareth by the Reformed
Customary of Normandy, Artic. 10th.

Some

Some of them belonged to Pleas of Goods and Chattels, which we call personal Actions, as those of *Octab.* Some to Pleas of Land, and real Actions, as those of *Quindena* to *Quindena*. *Nul n'est tenu de respondere de son heretage en mavidre tems que de quinixanie in quinixanie.* The more solemn Actions had the more solemn Returns, as we see by the * Stat. *dies communes in Banco*, which I leave to my Masters of the Law.

* Anno, 51.
Hen. 3. altered
by the
Statute of
32. Hen. 8.
Cap. 21.

I will not speak of the Returns particularly, more than that *Octab.* is sometimes reckon'd by 7. days, sometimes by 8; By 7. excluding the Feast from which it is counted; By 8. including it. And the word is borrowed from the Constitutions of the Church, where the seven days following Easter were appointed to be Festival-days (as we have shewed before) in imitation of the seven days *Azymorum*, following the Passover in the Levitical Law. But in this manner *Octab. Trinitatis* always includeth nine days, reckoning Trinity-Sunday for one, by reason the just *Octaba* falleth on the Sunday following, which being no day in Court, putteth off the Return till the next day after, making

Mun-

Munday always taken for the *true Octab.* unless you will count these two days for no more than *one*, as the

* Anno 21.
† Hen. 3.

* Stat. de Anno Bissextili in the like case hath ordained.

C H A P. VII.

Of the Quarta Dies post.

Touching the *Quartam diem post* allowed to the Defendant for his appearance *after* the day of Return, it is derived from the Ancient Saxon, Salique, French and German Laws, where it was ordained, that the Plaintiff should *per triduum seu amplius adversarium expectare, usque ad occasum solis* (which they called *Sol Satire*,) as appeareth abundantly in their Laws, and in the *Formular* of *Marcellus*, as *Bignonius* notes upon the same. To which also may be added that which occurreth in *Gratian* Cap. *Biduum vel triduum*. But the original proceedeth from the ancient custome of the Germans mentioned by *Tacitus*; † *Illud ex libertate vitium quod non simul nec iussi conveniunt, sed*

† Lib. de
morib. Ger.
Cap. 21.

&

& alter & tertius dies cunctatione coemptium absumitur. He saith, *ex libertate*, because that to come at a *peremptory* time was a *note* of *Servitude*, which the *Germans* despised.

C H A P. VIII.

Why I have used so much Canon and Foreign Law in the discourse, with an incursion into the Original of our Laws.

I Have used much *Canon* and some other *Foreign Laws* in this discourse, yet, I take it, not impertinently, for as the *Western Nations* are, for the most part, deduced from the *Germans*, so in ancient times there was a great agreement and affinity in their *Laws*.

——— *Facies non omnibus una,
Nec diversa tamen, qualem decet esse
sororum.*

They that look into the *Laws* of our *English Saxons*, of the *Saliques*, *French*, *Almayns*, *Ripurians*, *Bavarians*, *Longobards*, and other *German Nations*

Nations, about 800. years since, shall easily find, that out of them, and many other Manners, Rites and Customs of the *Saxons* and *German*s is the first part and foundation of our Laws, commonly called the *Laws of Edward the Confessour*, and Common Law. Two other parts principally (as from two Pole Stars) take their direction from the *Canon-Law* and the Laws of our brethren the *Longobards* (descending from *Saxon* lineage as well as we) called otherwise the *Feodal-Law*, received generally through all *Europe*. For in matters concerning the Church and Churchmen, Legitimation, Matrimony, Wills, Testaments, Adultery, Diffamation, Oaths, Perjury, Days of Law, Days of Vacation, Wager of Laws, and many other things, it proceeded, sometimes wholly, sometimes for the greater part, by the rules and precepts of the *Canon-Law*. And in matters touching Inheritance, Fees, Tenures by Knights service, Rents, Escheats, Dower of the third part, Fines, Felony, Forfeiture, Trial by Battail, &c. from the *Feodal-Law* chiefly; as those that reade the books of those Laws collected by *Oberius* and *Gerardus* may see
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apparently. Though we and divers other Nations (according as befitteeth every one in their particular) do in many things vary from them; which *Obertus* confelleth to be requisite, and to happen often among the *Lombards* themselves. I wish some worthy Lawyer would reade them diligently, and shew the several heads from whence these of ours were taken. They beyond the Seas are diligent in this kind, but we are all for profit and *Lucrando Pane*.

Another great portion of our Common Law is derived from the *Civil* (unless we will say that the Civil-Law is derived from ours;) for Dr. *Cowell*, who hath learnedly travelled in comparing and paralleling of them, affirmeth, that no Law of any Christian Nation whatsoever, approacheth nearer to the Civil-Law than this of ours. Yet he saith that all of them *generali hujus discipline equitate temperantur, & quasi conduntur*. Had he not said it, his book it self, intituled, *Institutiones Juris Anglicani ad methodum & seriem Institutionum Imperialium compositae & digestae*, would demonstrate it: Which *Bracton* also above 300. years before right well under-

understanding, not onely citeth the *Digests* and *Books* of the *Civil-Law* in many places for want of our *Common-Law*, but in handling our *Law* persweth the *Method*, *Phrase* and *Matter* of *Justinian's Institutes* of the *Civil-Law*.

When and how these several parts were brought into our *Common-Law* is neither easily nor definitively to be expressed. Those no-doubt of the *Canon-Law* by the prevalency of the *Clergy* in their several Ages, those of the *Feodal* by *military* Princes, at, and shortly after the Conquest. And those of *Civil-Law* by such of our Reverend *Judges* and *Sages* of ancient time, as for Justice and knowledge sake sought instruction thence, when they found no rule at home to guide their Judgments by. For I suppose they in those days judged many things, *ex aequo & bono*, and that their Judgments after as *Responsa Prudentium* among the *Romans*, and the *Codex Theodosianus* became *Presidents* of *Law* unto posterity.

As for the parts given unto *Common-Law* out of the *Constitutions* of our Kings since the Conquest, and before *Magna Charta*; I refer them (as they

they properly belong) to our Statute Law, though our *Lawyers* do reckon them ordinarily for Common-Law.

But among these various heads of our Law, I deduce none from the *Scots*, yet I confess that if those Laws of theirs, which they ascribe to *Malcolm*, the Second, who lived about 60 years before the Conquest, be of that antiquity, (which I cannot but question) and that our Book called *Glanvill* be wholly in effect taken out of the Book of *their* Law *verbatim*, for the greatest part, called *Regiam Majestatem*, (for they pretend that to be elder than our *Glanvill*; I must (I say) ingenuously confess, that the greatest part or portion of our Law is come from *Scotland*, which *none* I think versed either in story or antiquities *will* or *can* admit.

To come therefore to the point; If my opinion be *any* thing, I think the foundation of our Laws to be laid by our *German* Ancestours, but built upon and polished by materials taken from the Canon Law and Civil Law. And under the *capacious* name of *Germans*, I not onely intend our *Saxons*, but the ancient *French* and *Saliques*; not excluding from that fraternity

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the *Norwegians*, *Danes* and *Normans*. And let it not more mislike us to take our Laws from the noble *Germans*, a principal People of *Europe*, than it did the conquering *Romans* to take theirs from *Greece*, or the learned *Grecians* theirs from the *Hebrews*. It is not credible that the *Britains* should be the authours of them; or that their Laws after so many transmutations of people and government, but especially after the expulsion (in a manner) of their Nation, or at least of their Nobility, Gentry and Freemen, the abolishing of their Language, and the cessation of all commerce with them, should remain or be taken up by the conquering enemy, who scarcely suffered one Town in a County to be called as they named it, or one *English* word almost, (that I yet have learned) to creep into their Language. Admit that much of their *servile* and *base* people remained pleased perhaps as well with their *new* Lords as with their *old*; can we think that the *Saxons* should take either Laws or Manners, or form of Government from *them*?

But more expressly *Seneca* speaking of *Claudius* the Emperour's having made an absolute conquest of this Island.

* *Fussit & ipsum*
Nova Romana
Jura securis
Tremere oceanum.

* *Seneca*
Philosoph.
De morte
Cl. Cesaria.

In th' Ocean Isle new Laws he set,
Which from the Roman Axe were fet.

And more plainly *Herodian*, speaking of *Severus* the Emperour's going out of this Island, * he left (saith he) behind him in that part of the Island subject to the Romans his youngest Son *Geta*, to administer Law and the Civil affairs thereof, and some of his ancient friends to be his Councillours, taking his eldest Son *Antonius* for his wars against the Barbarians.

* *ἡ δὲ γὰρ*
τοῦ τῶν ἡ-
ῶν ἡ Γέτα
καὶ μόνον,
κατὰ λει-
πὴν, &c.
Herodiani
Hist. Lib. 2.
Cap. 48.

When the Romans conquer'd this Land, they neither removed the Inhabitants nor brought any Foreigners upon them, other than (to govern and keep them in obedience) some Legions of Souldiers, and small Colonies. Yet that they made an alteration of their Laws, we may see in the Scripture by the example of *Judea*. For though *Pompey* obtained the Kingdom there, rather by the confederacy with *Hyrcauus*, than by right of

Conquest, (and therefore suffer'd them to enjoy their rites of Religion, with the Liberties of most of their Cities;) yet it being reduced into a *Province* (as this of ours was) their *Laws* were so changed, as that, by their own confession, *John* 18. 31. *it was not lawfull for them to put any man to death.* Therefore our Saviour and the two Thieves were judged, and suffer'd up-
on the *Cross* after the *Roman* manner, not according to the *Laws* of the *Jews*, (for *their* Law never inflicted the *Cross* upon any offender) and the punishment of *Blasphemy* wherewith they charged Christ was *stoning*; and the punishment of *Theft* a *Quadruple* *Restitution*, or bondage in default thereof. As for the stoning of *Stephen*, it was not *judicial* but *tumultuous*, an act of fury, and against Law: In which course also they *thought* to have murdered *St. Paul*, had not *Lysias* prevented them, by sending him to his legal trial before *Cesar's* judgment Seat.

By this we may conceive how the *Romans* dealt with the *Britains* touching their *Laws*; and the story of Saint *Alban* and *Amphybalus* somewhat shew-
eth it; But what *Laws* soever the
Romans

Romans made in *Britain*, the *Saxons* doubtless swept them all away, with the *Britains*. There is certain proof of it; for *Antonius* made a Constitution, that all Nations under the *Roman* Empire should be called *Romans*, and this was done when the Northern People brake into the lower parts of *Europe*, and made their habitation there.

But more plainly *Seneca* speaking of *Claudius* the Emperour's having conquer'd this *Island*, as above;

Fussit & ipsum
Nova Romana
Jura securis
Tremere oceanum.

In th' Ocean Isle new Laws he set,
Which from the Roman Axe were fet.

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 The old Inhabitants, whom they expelled not but lived mingled with, were still called *Romans*; as we see in the ancient Laws of the *Saliques*, and *Burgundians*, in *Cassiodorus* and others, and their Laws distinguished by the Titles of *Lex Barbara*, and *Lex Romana*. But here in *Britain* after the *Saxons* had conquer'd, we never hear
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nor find any mention of *Lex Romana*, or of any *Roman*: Which sheweth, that both *that*, and the Laws of the *Britains* were expelled and driven away together, or that of the *Romans* with the *Romans*, and that of the *Britains* with the *Britains*.

What the *Laws* of the *Britains* were, it remains at this day to be seen by a model of them in an ancient Manuscript under the Title of * *The Laws of Hoel Dha*, (that is *Hoel the good*;) nothing consonant to these of ours at this day, or those of the *Saxons* in time past.

But we find by the *Red Book in the Exchequer*, that the Laws of *Hen. 1.* do so concur in many things with them of the other Nations we speak of, that sometimes he not onely citeth the *Salique Law*, and the *Rubuarian* or *Belgique* by name, but deduceth much of the Text *verbatim* from them. And we find also a great multitude of words of *Art*, names of *Offices*, *Officers* and *Ministers* in our *Law*, common in old time to the *Germans*, *French*, *Saliques*, *Longebards*, and other Nations,

* These Laws were made by Hoel Dha King of Wales, about the year 940. and since the writing of this Treatise have been published to the world by our Author himself, in the first Tome of his *Concilia Britannica*, pag. 408.

tions, as well as to our *Saxons*, *Danes* and *Normans*; but not one to my knowledge that riseth from the *British* tongue, nor do we, to my knowledge, retain any *Law*, *Rite* or *Custom* of the ancient *Britains*, which we received not from the *Saxons* or *Germans*, as used also by them of old, before they came into *Britain*.

For these few words that are found in our *Law Chirographer*, *Protonotary*, &c. whereby some argue the antiquity of our *Law* to be from the *Druides*, whom *Cæsar* and *Pliny* report to have used the *Greek* tongue, it is doubtless, that they came to us from the *Civil Lawyers*, and the one of them being a *Mongrel*, half *Greek* and half *Latine*, could not descend from the *Draides*, who had neither knowledge nor use of the *Latine* tongue.

They therefore that fetch our *Laws* from *Brutus*, *Mulmutius*, the *Druides*, or any other *Brutish* or *British* inhabitants here of old, affirming that in all the times of these several Nations, (*viz. Britains, Romans, Saxons, Danes and Normans*) and of their Kings, this Realm was still ruled with the self same customs that it is now govern'd withall; doe like them that make the *Ar-*
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cadians to be elder than the *Moon*, and the God *Terminus* to be so fixed on the *Capitoline-Hill*, as neither Mattocks nor Spades, nor all the power of *men* or of other *Gods*, could remove him from the place he stood in.

And thus I end.

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